

Kunhimohammed Vs. Nafeesa

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Court : Kerala

Decided On : Jan-06-2003

Reported in : 2003(1)ALT(Cri)244; 2004CriLJ1000; 2003(1)KLT364

Judge : R. Rajendra Babu, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 125, 173 and 362;
Code of Civil Procedure (CPC) - Sections 148

Appeal No. : Crl. M.P. No. 7865/2002 in R.P. (FC) No. 26/2002

Appellant : Kunhimohammed

Respondent : Nafeesa

Advocate for Def. : Babu S. Nair, Adv.

Advocate for Pet/Ap. : K.P. Mujeeb, Adv.

Judgement :
ORDER

R. Rajendra Babu, J.

1. The respondents filed M.C. 29/2001 before the Family Court, Manjeri claiming maintenance from the revision petitioner under Section 125 of the Code of Criminal Procedure (for short to be referred to as the Code hereinafter). The

Family Court passed an ex parte order granting maintenance. The petitioner challenged the above ex parte order before this court by filing R.P. (F.C.) 26/2002. This court allowed the above revision and set aside the ex parte order on condition that the revision petitioner would deposit Rs. 7,500/- towards the arrears of maintenance within two weeks from the date of the order. It was further directed that if the revision petitioner fails to make a deposit as directed, the ex parte order will stand affirmed and the revision will stand dismissed. The above order was passed on 3.10.2002. The petitioner could not deposit the amount in time and accordingly he filed the present petition for reviewing the order and for extending the period for deposit.

2. The learned counsel for the petitioner submitted that the order of this court to deposit the arrears of maintenance could not be complied with in time as the petitioner was abroad. The learned counsel for the respondents submitted that the order of the court below had already come into effect by the noncompliance of the condition and the above order was not liable to be reviewed in view of Section 362 of the Code. It was further argued that an order passed by this court cannot be modified or reviewed, except a clerical error or mistake as Section 362 of the Code is a bar for considering the present application for review. The learned counsel for the petitioner submitted that the proceedings under Chapter X of the Code regarding the grant of maintenance to the wife, children and parents is totally different from the other proceedings contemplated under the Code and even Section 125 of the Code empowers the court to pass an ex parte order and to set aside such ex parte order when sufficient reasons are shown for the absence of the party. Further, 127 of the Code permits the court to modify or review its own orders in change of circumstances. Thus the proceedings under Chapter X of the Code stands in a different footing than the other proceedings contemplated by the Code. The learned counsel for the petitioner further submitted that even a petition under Section 125 of the Code dismissed for default can be restored in view of the provisions in Chapter X. He placed reliance on a decision of the Delhi High Court in *Smt. Prema Jain v. Sudhir Kumar Jain* (1980 CrL. L.J. 80) wherein it was held that the Magistrate had power to restore a petition under Section 125 of the Code dismissed for default. The same view was taken by the Punjab and Haryana High Court in *Pavittar Singh v. Bhupinder Kaur* (1988 CrL. L.J. 1624). I respectfully

agree with the above view taken by the Delhi and Punjab & Haryana High Courts. An application under Section 125 of the Code cannot be treated as a police report as contemplated under Section 173 or a complaint as defined in Section 2(b) of the Code. The order to be passed by the court in proceedings under Section 125 is neither an order of acquittal nor a conviction. It is not an order of discharge too. The proceedings under Section 125 in Chapter X stands in a different footing than the other proceedings contemplated by the other provisions of the Code. It is more civil in nature rather than a criminal trial as contemplated by the Code. Hence the argument advanced by the learned counsel for the respondents that the order is not reviewable under Section 362 of the Code cannot be accepted. Section 362 cannot have any application in respect of orders passed on proceedings under Chapter X of the Code. As Section 362 is not a bar for reviewing the order, this court is fully competent to review its earlier order. It is settled law that time can be extended even after the expiry of the stipulated time in view of Section 148 of the Code of Civil Procedure. As the proceedings under Chapter X of the Code is more or less similar to the proceedings under the Code of Civil Procedure, the time once granted by this court can be extended even after the expiry of the above period. Hence this petition is allowed. The time for compliance of the order of this court shall stand extended till 15.1.2003. The respondents shall be entitled to Rs. 1000/- towards costs.